

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

In re:

Case No. 8:19-bk-03302-MGW  
Chapter 13

WILLIAM HEATH CALHOUN  
AMANDA LYNN CALHOUN,

Debtor(s).

**MOTION TO VALUE COLLATERAL AND TO DETERMINE SECURED STATUS OF  
ALLY FINANCIAL (CLAIM NO. 21)**

NOTICE OF OPPORTUNITY TO  
OBJECT AND REQUEST FOR HEARING

Pursuant to Local Rule 2002-4, the Court will consider the relief requested in this paper without further notice or hearing unless a party in interest files a response within 30 days from the date set forth on the attached proof of service, plus an additional three days for service, if any party was served by U.S. Mail.

If you object to the relief requested in this paper, you must file a response with the Clerk of the Court at 801 North Florida Avenue, Suite 555, Tampa, FL 33602 and serve a copy on the movant's attorney, David Wilson IV, Esquire, of THE WILSON ADVOCACY GROUP, PA, P.O. Box 3142, Winter Haven, FL 33885, and any other appropriate persons within the time allowed. If you file and serve a response within the time permitted, the Court will either schedule and notify you of a hearing, or consider the response and grant or deny the relief requested without a hearing.

If you do not file an objection within the time permitted, the Court will consider that you do not oppose the relief requested in the paper without further notice or hearing, and may grant the relief requested.

**COMES NOW**, WILLIAM HEATH CALHOUN and AMANDA LYNN CALHOUN (the “Debtor’s”) by and through their undersigned attorney, and files this Motion to Value Collateral and to Determine Secured Status, pursuant to 11 U.S.C. § 506(a) and 1322(b)(2) and Rules 3012, 4003(d) and 9014 of the Federal Rules of Bankruptcy Procedure hereby moves this Honorable Court for an entry of an order to lower the interest rate and determine the secured status of a claim held by of ALLY FINANCIAL (Claim No. 21) (“ALLY”), against the Debtor’s 2015 Chevrolet Silverado, VIN No.: 3GCUKREC2FG213149, and as grounds therefore respectfully represents that:

1. On April 11, 2019, the Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code, 11 U.S.C., commencing in this Court in Case No. 8:19-bk-03302-MGW.

2. This Court has jurisdiction over this motion pursuant to 28 U.S.C. Sections 1334(b), 157(b)(2)(A), (B), (K), (o), and Rules 3012, 4003(d) and 9014 of the F.R.Bank.Proc.

3. On information and belief, the Debtor alleges that ALLY, Creditor, is a lending institution, is engaged in the business of providing auto loans to the consuming public, and does business within the State of Florida.

4. At the time of filing the Debtor owned, and still owns a 2015 Chevrolet Silverado, VIN No.: 3GCUKREC2FG213149, in rough working condition with approximately 67,699 miles, hereinafter “vehicle”. The vehicle’s value is based upon a valuation researched through the NADA Guides and is believed to be \$11,775.00. A copy of the valuation is attached hereto and made a part hereof as Exhibit A.

5. The Debtor objects to the alleged current rate of interest of 7.8% as being unreasonable and excessive and believes that the interest rate should be modified to the current reasonable rate of interest of 5.25%, as this rate is a fair rate of return in the present market. In accordance with *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), the Debtor requests that the Court permit the allowed secured claim of Chase, including its successors and or assigns, to be paid at an interest rate of 5.25%.

6. Ally alleges a purchase money security interest (“PMSI”) in the Collateral. The Loan and Security Agreement (the “Agreement”) is dated February 23, 2015 (Loan No. xxxxxx3524).

7. The Collateral is a motor vehicle and was purchased more than 910 days prior to the petition in the above-styled cause (the “Petition”). In order to be subject to the so-called “hanging paragraph”, which follows 11 U.S.C. § 1325(a)(9), one condition is that the vehicle must have been purchased less than 910 days prior to the filing of the petition. The Collateral was purchased more than 910 days prior to the

filing of the Petition. As such, the Collateral is not subject to the “hanging paragraph”.

8. Accordingly, the Collateral is subject to valuation under 11 U.S.C. § 1325(a)(9), and 1325(a).

9. The value of the Collateral, based on the value listed above, is \$11,775.00 and the remained of the allowed secured claim shall be treated as an unsecured claim.

**WHEREFORE**, the Debtor respectfully requests of the Court enter an order finding:

A. That the Collateral is subject to valuation under 11 U.S.C. § 502(b), 506(a), and 1325(a)(5);

B. That the Court determines the value of the Property to be \$11,775.00;

C. That the secured claim of Ally in the amount of \$25,212.92 be paid in the amount of the value of the vehicle, \$11,775.00, and permitting the lien to be paid at 5.25% annual interest through the Debtor’s plan and determines the remainder value as an unsecured claim;

D. That the Court grant such other relief as is proper and just.

**CERTIFICATE OF SERVICE**

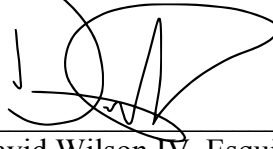
**I HEREBY CERTIFY** that on 24<sup>th</sup> day of June, 2019, a true and correct copy the foregoing was served via electronic mail through the court’s ECF system at the email address registered with the court:

Ally Financial, Andrew W. Houchins, Esq., P.O. Box 130424, Roseville, MN 55113-0004, ahouchins@rushmarshall.com;

United States Trustee – TPA7/13, 7, Timberlake Annex, Suite 1200, 501 E Polk Street, Tampa, FL 33602, USTPRegion21.TP.ECF@USDOJ.GOV; and,

Kelly Remick, Chapter 13 Standing Trustee, ecf@ch13tampa.com

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'David Wilson IV', written over a horizontal line.

David Wilson IV, Esquire

FL Bar No. 103204

THE WILSON ADVOCACY GROUP, PA

P.O. Box 3142

Winter Haven, FL 33885

Phone: (863) 401-8155

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Attorney for Debtor



## NADAguides Value Report 11/12/2018

# 2015 Chevrolet Silverado 1500

## Regular Cab Work Truck 2WD

### Values

	<b>Rough Trade-In</b>	<b>Average Trade-In</b>	<b>Clean Trade-In</b>	<b>Clean Retail</b>
Base Price	\$12,725	\$14,225	\$15,450	\$17,000
Mileage (67,699)	-\$950	-\$950	-\$950	-\$950
Total Base Price	\$11,775	\$13,275	\$14,500	\$16,050

### Options (add)

<b>Price + Options</b>	<b>\$11,775</b>	<b>\$13,275</b>	<b>\$14,500</b>	<b>\$16,050</b>
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Certified Pre-Owned (CPO)				+\$1,450
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<b>Certified Price with Options</b>				<b>\$17,500</b>
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**Rough Trade-In** - Rough Trade-in values reflect a vehicle in rough condition. Meaning a vehicle with significant mechanical defects requiring repairs in order to restore reasonable running condition. Paint, body and wheel surfaces have considerable damage to their finish, which may include dull or faded (oxidized) paint, small to medium size dents, frame damage, rust or obvious signs of previous repairs. Interior reflects above average wear with inoperable equipment, damaged or missing trim and heavily soiled /permanent imperfections on the headliner, carpet, and upholstery. Vehicle may have a branded title and un-true mileage. Vehicle will need substantial reconditioning and repair to be made ready for resale. Some existing issues may be difficult to restore. Because individual vehicle condition varies greatly, users of NADAguides.com may need to make independent adjustments for actual vehicle condition.

**Average Trade-In** - The Average Trade-In values on nadaguides.com are meant to reflect a vehicle in average condition. A vehicle that is mechanically sound but may require some repairs/servicing to pass all necessary inspections; Paint, body and wheel surfaces have moderate imperfections and an average finish and shine which can be improved with restorative repair; Interior reflects some soiling and wear in relation to vehicle age, with all equipment operable or requiring minimal effort to make operable; Clean title history; Vehicle will need a fair degree of reconditioning to be made ready for resale. Because individual vehicle condition varies greatly, users of nadaguides.com may need to make independent adjustments for actual vehicle condition.

**Clean Trade-In** - Clean Trade-In values reflect a vehicle in clean condition. This means a vehicle with no mechanical defects and passes all necessary inspections with ease. Paint, body and wheels have minor surface scratching with a high gloss finish and shine. Interior reflects minimal soiling and wear with all equipment in complete working order. Vehicle has a clean title history. Vehicle will need minimal reconditioning to be made ready for resale. Because individual vehicle condition varies greatly, users of NADAguides.com may need to make independent adjustments for actual vehicle condition.

**Clean Retail** - Clean Retail values reflect a vehicle in clean condition. This means a vehicle with no mechanical defects and passes all necessary inspections with ease. Paint, body and wheels have minor surface scratching with a high gloss finish and shine. Interior reflects minimal soiling and wear with all equipment in complete working order. Vehicle has a clean title history. Because individual vehicle condition varies greatly, users of NADAguides.com may need to make independent adjustments for actual vehicle condition. Note: Vehicles with low mileage that are in exceptionally good condition and/or include a manufacturer certification can be worth a significantly higher value than the Clean Retail price shown.